

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

PRENTICE TILLMAN
LA. DOC #520329
VS.

DAVID WADE CORRECTIONAL
CENTER, ET AL.

CIVIL ACTION NO. 5:13-cv-2572
SECTION P

JUDGE TOM STAGG
MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se plaintiff Prentice Tillman, proceeding *in forma pauperis*, filed the instant civil rights complaint pursuant to 42 U.S.C. §1983 on August 29, 2013. Plaintiff is an inmate in the custody of Louisiana's Department of Corrections (DOC). He is incarcerated at the David Wade Correctional Center (DWCC) and complains that the defendants, DWCC, Dr. Fuller, and Nurse John Bill, have denied him medical testing. He prays for injunctive relief – an order directing the defendants to perform diagnostic tests, or an order transferring him to another facility. This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. For the following reasons it is recommended that the complaint be **DISMISSED WITH PREJUDICE** for failing to state a claim for which relief may be granted.

Statement of the Case

On some unspecified date plaintiff began to experience “some very bad and painful feelings” and “suffering with tastes” upon awakening. He became “really worried” about his health and requested multiple diagnostic tests, including a test for HIV prior to his unspecified release date. On April 2, 2013, he filed an administrative remedies grievance complaining that

Nurse John Bill denied testing in February. [Doc. 1-2, p. 1] On April 29, 2013, Assistant Warden Angie Huff responded to his grievance as follows:

You were seen at sick call on 3/1/13 requesting multiple testing including HIV. You were examined by Nurse Martin. Any testing done at DWCC including HIV testing has to be clinically indicated and ordered by a physician. Your sick call was reviewed by Dr. Fuller on 3/4/13 and no testing orders were given. Your medical needs are being appropriately addressed. [Doc. 1-2, p. 2]

His subsequent appeal to DOC Headquarters was denied on May 30, 2013, as follows, “As stated in the First Step response, your complaint was reviewed by Dr. Fuller and no testing orders were given. Medical opinion is controlling ... Your request for relief is denied.” [Doc. 1-2, p. 3]

Plaintiff then filed the instant complaint on August 29, 2013.

Law and Analysis

1. Screening

Plaintiff is a prisoner who has been permitted to proceed *in forma pauperis*. As a prisoner seeking redress from an officer or employee of a governmental entity, his complaint is subject to preliminary screening pursuant to 28 U.S.C. § 1915A. *See Martin v. Scott*, 156 F.3d 578, 579-80 (5th Cir.1998) (per curiam). Because he is proceeding *in forma pauperis*, his complaint is also subject to screening under § 1915(e)(2). Both § 1915(e)(2) (B) and § 1915A(b) provide for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke*

v. Williams, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. A complaint fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Defendants

In addition to Dr. Fuller and Nurse Bill, plaintiff has sued DWCC. Fed. R. Civ. P. 17(b) provides that the “capacity to sue or be sued shall be determined by the law of the state in which the district court is held.” Thus, Louisiana law governs whether an entity such as a corrections facility or prison management company has the capacity to be sued in this action. Under Louisiana law, to possess such a capacity, an entity must qualify as a “juridical person.” This term is defined by the Louisiana Civil Code as “... an entity to which the law attributes personality, such as a corporation or partnership.” La. Civ.Code Ann. art. 24. It does not appear that the DWCC is a juridical entity capable of being sued. Therefore, as to this defendant, plaintiff has failed to state a claim for which relief may be granted.

3. Medical Care

Plaintiff is an inmate in the custody of the LDOC. He complains that he was denied various diagnostic tests, including a test to determine whether he is HIV positive. The constitutional right of a convicted prisoner to prompt and adequate medical care is based upon the Eighth Amendment’s prohibition of cruel and unusual punishment. In order to establish an actionable violation of the Eighth Amendment, the prisoner plaintiff must allege facts tending to establish that the defendants were deliberately indifferent to his serious medical needs and safety.

Thompson v. Upshur County, Texas, 245 F.3d 447, 457 (5th Cir.2001). A showing of deliberate indifference with regard to medical treatment requires the inmate to submit evidence that prison officials “ ‘refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.’ ” *Domino v. Texas Dep’t of Criminal Justice*, 239 F.3d 752, 756 (5th Cir.2001) (citation omitted).

It is manifestly obvious that plaintiff simply disagrees with the decisions of the health care professionals who are responsible for his care and treatment. As noted in both plaintiff’s complaint and in the responses to his grievances, plaintiff was examined by health care professionals when he submitted his request for diagnostic testing. Testing was denied because it was not clinically indicated. In other words, plaintiff exhibited no symptoms which would warrant further diagnostic testing at this time. Of course, he disagrees with that conclusion; however, his disagreement with the health care professionals’ diagnosis or treatment choices falls far short of establishing deliberate indifference since mere disagreement with medical diagnosis or treatment does not state a claim under the Eighth Amendment. *See Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir.1997), citing *Young v. Gray*, 560 F.2d 201, 201 (5th Cir.1977); *Spears v. McCotter*, 766 F.2d 179, 181 (5th Cir.1985).

In any event, in order to allege a violation of the Eighth Amendment, plaintiff must not only demonstrate deliberate indifference on the part of the defendants, but he must also demonstrate that the deliberate indifference resulted in substantial harm. *Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006). Plaintiff has not identified any “substantial harm” that has befallen him as a result of the defendants’ actions. His medical care complaint fails to state a

claim for which relief may be granted.

4. Transfer

In addition to, or in the alternative to his prayer for an order directing immediate testing, plaintiff requested a transfer to another facility. Plaintiff is an inmate in the custody of the DOC. Under Louisiana law, “any individual subject to confinement in a state adult penal or correctional institution shall be committed to the Louisiana Department of Public Safety and Corrections and not to any particular institution within the jurisdiction of the department. The director of corrections shall assign each newly committed inmate to an appropriate penal or correctional facility. The director may transfer an inmate from one such facility to another, insofar as the transfer is consistent with the commitment and in accordance with treatment, training and security needs established by the department...” La. R.S.15:824(A).

Plaintiff is an DOC inmate and therefore his placement is solely within the purview of the DOC. Broad discretionary authority must be afforded to prison administrators because the administration of a prison is “at best an extraordinarily difficult undertaking.” *Wolff v. McDonnell*, 418 U.S. 539, 566, 94 S.Ct. 2963, 2979, 41 L.Ed.2d 935 (1974) To hold that any substantial deprivation imposed by prison authorities triggers the procedural protections of the Due Process Clause would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts. *Meachum v. Fano*, 427 U.S. 215, 225, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976). “Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” *Price v. Johnston*, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948).

Prisoners simply do not have a constitutionally derived liberty interest in being held in any particular institution. *See Meachum v. Fano*, 427 U.S. 215, 224, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976); *Olim v. Wakinekona*, 461 U.S. 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983); *Montanye v. Haymes*, 427 U.S. 236, 96 S.Ct. 2543, 49 L.Ed.2d 466 (1976); *Adams v. Gunnell*, 729 F.2d 362, 368 (5th Cir. 1984); *Oladipupo v. Austin*, 104 F.Supp.2d 643 (W.D.La. 2000). Clearly, plaintiff is not entitled to the relief prayed for and his complaint must be dismissed accordingly.

Conclusion and Recommendation

Therefore,

IT IS RECOMMENDED THAT plaintiff's civil rights complaint be **DISMISSED WITH PREJUDICE** for failing to state a claim for which relief may be granted.

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

See, Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, November 13, 2013.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE